

## REMARKS

Reconsideration and withdrawal of all grounds of rejection are respectfully requested in view of the above amendments and the following remarks. Claims 1-24 were rejected. By entry of this amendment, claims 1-3, 12-14, and 22-24 have been amended and new claims 25-31 have been added. Consequently, claims 1-31 are pending in this application. No new matter has been added.

### Amendments to the specification

Paragraph [0012] has been amended to correct the numerical indicator associated with the second end of the top surface of the base portion. In Fig. 3, the second end of the top surface is labeled 55. However, paragraph [0012] of the specification labels the second end of the top surface as 56. Therefore, amendment of the specification is required to correct the typographical error.

### Objections

Claims 1, 12, 22, and 24 were objected to for various informalities. Claims 1, 12, 22, and 24 have been amended in response to these objections. Therefore, applicants respectfully submit that claims 1, 12, 22, and 24, as amended, are patentable and overcome these objections.

### Rejections under 35 USC § 102(b)

Claims 1-4 and 12-15 were rejected as being anticipated by Schrader (US Pat. No. 6,094,784).

Applicants respectfully submit that claims 1 and 12, as amended, are patentable over the above cited reference, as features of the claims are not disclosed or suggested in the reference. For example, amended claims 1 and 12 recite a hook having a first portion extending outward from the first end of the base and a second portion curving away from the first end of the base and the second end of the base. In Schrader, the straight shank section 18 of the hook 12 (identified in the Office Action as the hook shown in Fig. 14) extends outward from a first end of the base 30. The first end of the base 30 shown in Fig. 14 is the left side of the base. However,

the curved portion 16 of the hook 12 curves away only from a second end of the base 30 and not the first end of the base 30. The second end of the base 30 shown in Fig. 14 is the right side of the base. Instead, the curved portion 16 of the hook 12 curves towards the first end of the base 30. As such, amended claims 1 and 12 are patentable over the above cited reference and are in condition for allowance. Claims 2-4 are also patentable over the cited reference at least based on direct or indirect dependence on claim 1 and are in condition for allowance. In addition, claims 13-15 are patentable over the cited reference at least based on direct or indirect dependence on claim 12 and are in condition for allowance.

Claims 1-4, 8-15, and 19-21 were rejected as being anticipated by Tracy (US Pat. No. 4,559,677).

Applicants respectfully submit that claims 1 and 12, as amended, are patentable over the above cited reference, as features of the claims are not disclosed in the reference. For example, amended claims 1 and 12 recite a hook having a first portion extending outward from the first end of the base and a second portion curving away from the first end of the base and the second end of the base. In Tracy, the hook 10 (identified in the Office Action as the hook shown in Figs. 1-2) extends outward from a first end of the base 24. However, the curved portion 16 of the hook 10 curves toward, not away from, the first and second end of the base 24. As such, amended claims 1 and 12 are patentable over the above cited reference and are in condition for allowance. Claims 2-4 and 8-11 are also patentable over the cited reference at least based on direct or indirect dependence on claim 1 and are in condition for allowance. In addition, claims 13-15 and 19-21 are patentable over the cited reference at least based on direct or indirect dependence on claim 12 and are in condition for allowance.

Rejections under 35 USC § 103(a)

Claims 5-7, 16-18, and 22-24 were rejected as being unpatentable over Schrader (US Pat. No. 6,094,784) in view of Johnston (US Pub. No. 2004/0148831 A1).

Applicants respectfully submit that claims 5-7 (dependant on amended claim 1) and 16-18 (dependant on amended claim 12) are patentable over the cited references, as features of the claims are not disclosed or suggested in either of the references. For example, amended claims 1

and 12 recite a hook having a second portion curving away from the first end of the base and the second end of the base. As discussed above, Schrader does not disclose or suggest this feature. In addition, Johnston does not disclose or suggest a hook, much less a hook having a second portion curving away from the first and second end of the base. Therefore, claims 5-7 are patentable over the cited references based on direct or indirect dependence on claim 1 and are in condition for allowance. Similarly, claims 16-18 are patentable over the cited references based on direct or indirect dependence on claim 12 and are in condition for allowance.

Applicants respectfully submit that claims 22-24 are patentable over the cited references because the Office Action fails to provide a *prima facie* case of obviousness with respect to these claims. The Office Action admits that Schrader fails to disclose a hook with an indicator plate located on the base. Nevertheless, the Office Action concludes that “it would have been obvious to one having ordinary skill in the art at the time of Applicants’ invention to have an indicator plate located at a base as taught by Johnston in the hook of Schrader.” It is respectfully submitted that Schrader in view of Johnston does not teach or suggest the asserted modification.

The ultimate determination of whether an invention is obvious is a legal conclusion based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the prior art; (3) the differences between the claimed invention and the prior art; and (4) objective evidence of nonobviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966). Along with these requirements, the law is quite clear that for a claim to be held obvious, the prior art must suggest the modifications sought to be patented. In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984). In addition, the level of skill in the art cannot be relied upon to provide the suggestion to combine references. Al-Site Corp. v. VSI Int’l Inc., 174 F.3d 1308, 1324 (Fed. Cir. 1999); *see* W.L. Gore & Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553 (Fed. Cir. 1983) (“To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.”).

Amended claims 22-24 recite a bungee cord hook with an indicator plate located on the circumferential surface of the base. The Office Action admits that Schrader fails to disclose or

suggest the use of an indicator plate on the base of a bungee cord hook. Schrader neither discusses the need for an indicator plate nor suggest that an indicator plate may be added to the bungee cord hook. Similarly, Johnston neither discusses the need for an indicator plate on a bungee cord hook nor suggests that an indicator plate may be added to the base of a bungee cord hook. As such, the Office Action articulates no evidence of any suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Therefore, the Office Action fails to provide a *prima facie* case of obviousness with respect to claims 22-24.

Furthermore, “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006). For example, an Office Action cannot establish a *prima facie* case of obviousness by locating references which describe various aspects of a patent applicant’s invention without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done. Ex parte Levengood, 28 USPQ2d 1300, 1301 (Bd. Pat. App. & Inter. 1993). In other words, the Office Action must present some objective reason to combine the teachings of the references. Id.

The Office Action articulates no motivation or suggestion to combine the Johnston and Schrader patents. Instead, the Office Action rests on the conclusory statement that it was obvious to one having skill in the art at the time of Applicants’ invention. As such, the Office Action provides no objective reason to combine the teachings of the references. Therefore, the Office Action fails to provide a *prima facie* case of obviousness with respect to claims 22-24.

#### New claims 25-31

New claims 25-31 are also believed to be allowable. Claim 25 is believed to be allowable at least based on direct dependence on claim 24. Claim 26 recites a hook having a first portion extending outward from the first end of the base and a second portion curving away from the first end of the base and the second end of the base. As such, claim 26 is believed to be allowable. In addition, claims 27-31 are believed to be allowable at least based on direct or

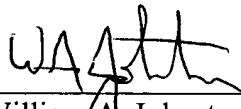
indirect dependence on claim 26.

In summary, independent claims 1, 12, 22, 24, and 26 are believed to be allowable. Further, the remaining pending dependent claims are allowable at least based on direct or indirect dependence from the corresponding allowable independent claims.

In view of the above amendments and remarks, it is respectfully submitted that all pending claims of this application are in condition for allowance. Accordingly, a Notice of Allowance for all pending claims of this application is respectfully solicited. Furthermore, if the Examiner believes that additional discussions or information might advance the prosecution of this application, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,

Date: 12/29/06

  
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